S.B.CIVIL WRIT PETITION NO. 174/2003.

DATE OF ORDER: JANUARY 14, 2005.

HON'BLE MR. JUSTICE R.P.VYAS

Mrs.Vidyawati Bora, Assistant Government Advocate,
for Petitioner.
Mr.Gopal Calla, for Respondent No.3.

Petitioner – the Mining Engineer, Mines and Geology Department, Government of Rajasthan, Jaipur – has filed the instant petition, praying, inter alia, therein for quashing the award dated March 20, 2001 (Annex.A/5) and Notification dated February 8, 1999 (Annex.A/2) and directing the respondents to initiate proper proceedings against his actual employer.

It is submitted by the learned counsel for the petitioner that the Mining Engineer, Mines and Geology Department has never been the Employer of Respondent No.3 – Shri Ratna Ram Patel (claimant). The respondent No.3, (claimant) being employee of one employer – Mining Engineer (Writs) submitted his writ petition before this Hon'ble Court which was titled as S.B.Civil Writ Petition No.4735/91 (Ratna Ram Patel v. Mining Engineer (Writs) and Others). In the said writ petition, the employee – Ratna Ram (claimant) submitted that despite having completed 240 days under the Mining Engineer (Writs), his services have been retrenched without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947'). In that writ petition, the notices were issued and the reply was submitted, denying the fact of completion of 240 days. The said writ petition was disposed of with a direction that the workman Ratna Ram should have raised the dispute under the Industrial Disputes Act before the Labour Court. The said decision was rendered on December 5, 1996, by the then Hon'ble Mr.Justice J.C.Verma.

It is further submitted by the learned counsel for the petitioner that after the aforesaid order dated December 5, 1996 was passed this Court, the present respondent No.3 – Ratna Ram (the claimant) left the idea of submitting his case before the appropriate Government. But after the expiry of about three years, a reference was made to the appropriate Government, which was referred to the Labour Court on February 8, 1999. The appropriate Government issued a reference against the present petitioner who is a different employer than the actual employer of respondent No.3 Ratna Ram (claimant). The Mining Engineer, Mines and Geology Department, Jodhpur has power to issue mining lease, licence in his division and having its headquarters at Jodhpur. His entire work is in relation to the development and regulation of mines and minerals.

It is also submitted that the Mining Engineer (Writs) is a separate establishment than the Mining Engineer, Mines and Geology Department. Its Office is being headed by a Mining Engineer.

After receiving the reference, the Judge, Labour Court, Jodhpur, issued notice to the present petitioner – Mining Engineer, Mines and Geology Department, Jodhpur. The said notice was given to Shri Sngram Singh, Class IV servant of the Office of the present Petitioner, the Mining Engineer, on April 20, 1999. The peon did not bring it to the notice of the Mining Engineer that the proceedings have been initiated against him before the Labour Court. When the Mining Engineer did not turn up, the arguments of the counsel for the workman were heard and an ex parte award was passed by the Labour Court against the present-petitioner – Mining Engineer, Mines and Geology Department, Jodhpur and not against the Mining Engineer (Writs), the actual employer of the workman. The workman submitted his application before his actual employer for the compliance of the award. The Mining Engineer (Writs) submitted his writ

petition before this Hon'ble Court, which was dismissed summarily, holding that the writ petition was not entertainable as the Mining Engineer (Writs) was not considered as an aggrieved party.

It is submitted by the learned counsel for the petitioner that now, the present petitioner – the Mining Engineer has submitted the instant petition against the impugned award dated 20.3.2001 (Annex.A/5) when it came to his notice that the writ petition of the Mining Engineer (Writs) has been dismissed by the Hon'ble Court..

It is submitted by the learned counsel for Respondent No. 3 – Ratna Ram Patel (claimant) that the Mining Engineer, Mines & Geology Department and the Mining Engineer (Writs) are the Department of the State of Rajasthan, therefore, it cannot be said that the Ratna Ram (claimant) was never in the employment of this Department. As a matter of fact, the Government made inordinate delay in making a reference over which the respondent No.3 (claimant) had absolutely no control. It is further submitted that the (claimant) respondent No.3 – Ratna Ram Patel made his claim against the Mining Engineer (Writs), but it was due to the citation made in the reference by the State Government about the Mining Engineer, Mines & Geology, that the Labour Court passed its award in pursuance to the said reference. Apart from that, there is no fault of the (claimant) respondent No.3, if the employee of the petitioner – Mining Engineer did not bring the fact to the notice of the Officer concerned. It is pointed out that in fact, the office of the Mining Engineer ignored the said notice of the Court and now after the lapse of 5 years, they want to raise the matter before this Hon'ble Court. Therefore, the instant petition deserves to be dismissed on this ground alone.

It is further submitted that the award was passed in pursuance to the reference made by the Government and it was the duty of the petitioner – Mining

Engineer to have immediately taken steps before the Labour Court (Tribunal) in the matter either on 20.4.99 or afterwards when the notice was served on the department. The Mining Engineer (Writs), instead of approaching the Industrial Tribunal, submitted the instant writ petition.

It is also submitted that an inordinate delay has been caused by the present petitioner in filing the instant petition, therefore, looking to the entire facts and circumstances of the case, the present petitioner cannot be given indulgence at this belated stage to challenge the impugned award and there is absolutely no substantial reason to condone the inordinate delay.

Apart from that, no specific date has been mentioned when the present petitioner became aware of this award, nor the period so spent has been satisfactorily explained, so, the instant petition may be dismissed on the ground of latches also, as the workman had been suffering ever since his wrongful termination by the employer.

Heard learned counsel for the parties.

It may be mentioned that the learned Labour Court, Jodhpur, after making a fact finding enquiry, has given specific findings that respondent No.3 (claimant) Ratna Ram Patel has worked with the employer – the Mining Engineer, Mines and Geology Department, Jodhpur from 10.8.87 to 28.2.90 continuously and he has worked for more than 240 days in a calendar year. The services of the workman have been terminated w.e.f. 28.2.90. Prior to termination of his services, no Notice as required under the provisions of Section 25F of the Industrial Disputes Act, 1947 was given to him. Not only that, even after service of the notice on the Department on 13.5.99, the present petitioner (non-claimant before the Labour Court), did not care to put in appearance and file a reply before the Labour Court upto 17.10.99 and ultimately, on 17.10.99, orders for taking ex parte proceedings

were passed. The workman submitted his affidavit and documents in support of his claim. There was no counter from the non-claimant (Mining Department). Therefore, after taking into consideration all the facts and circumstances of the case and scrutinizing the material available on record, the learned Labour Court gave a specific finding to the effect that the termination of the services of the workman by the employer w.e.f. 3.2.91 was illegal and against the provisions of Section 25F and 25H of the Industrial Disputes Act, 1947 and directed the non-claimant the Department (Mining Engineer, Mines & Geology Department, Jodhpur) to reinstate the workman back in service from the date of the reference, i.e., 8th February, 1999, with 25% back wages. It is pertinent to mention here that instead approaching the Labour Court for set assing the ex parte award, the present petitioner-Mining Engineer, Mines and Geology Department, has filed the instant petition under Articles 226 and 227 of the Constitution of India. Thus, the finding of the learned Labour Court is absolutely correct and it calls for no interference as it has been given after subjective satisfaction and all objective considerations.

In this view of the matter, I do not find any merit in the instant petition. The writ petition is dismissed summarily.

(R.P.VYAS),J.

Scd.